



Comptroller General  
of the United States  
Washington, D.C. 20548

144982

## Decision

**Matter of:** EC Corporation--Reconsideration

**File:** B-242415.7

**Date:** October 1, 1991

Sanford W. Faulkner, Esq., Rives & Peterson, for the protester.  
Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Request for reconsideration is denied where factual information submitted adds nothing to the record and therefore provides no basis for reconsideration.
2. An interested party to a protest has an affirmative obligation to diligently pursue information which would aid in the resolution of the protest; information that was not diligently pursued may not form the basis for a request for reconsideration.

### DECISION

EC Corporation requests reconsideration of our decision in Joanell Laboratories, Inc.; Nu-Way Mfg. Co., Inc., B-242415; B-242415.3, May 1, 1991, 91-1 CPD ¶ 424, aff'd, B-242415.4, July 2, 1991, 91-2 CPD ¶ \_\_\_\_\_, sustaining Joanell's protest of the award of a contract to EC Corporation under request for proposals (RFP) No. N61339-90-R-0011, issued by the Department of the Navy for Main Tank Gun/Weapons Effect Signature Simulator (MTG/WESS) Systems, which encompassed both a firing device and pyrotechnic requirements.

We deny EC's request for reconsideration.

EC argues that our decision should be modified for two reasons. First, EC contends that it recently became aware that if the analysis used by Joanell in its protest to discredit the acceptability of EC's device were applied to Joanell's device, it also would be unacceptable. Second, EC asserts that Joanell's analysis concerning EC's proposed firing device and pyrotechnic was erroneous.

We fail to see the relevance of the first point. Although we sustained the protest after finding that the Navy could not have determined that EC's device was acceptable because certain testing was not done, we also noted that Joannell's product also was not acceptable, a point we reiterated in our July 2, 1991, decision issued in response to Joannell's request for reconsideration. Therefore, EC's first point adds nothing to the record and provides no basis for reconsideration.


As to EC's challenge to Joannell's contention that EC's original proposal was unacceptable, in our initial decision we found that the agency had not rebutted Joannell's assertion that EC's offer was unacceptable in material respects because EC did not furnish required test data. Joannell's specific allegation that EC's product was nonconforming was contained in the initial protest letter and in Joannell's comments to the agency report. Apparently, EC obtained a copy of a document filed with Joannell's comments of February 13, 1991, pursuant to a Freedom of Information Act request in late June 1991, 4 months after the comments were filed with our Office, and almost 2 months after we issued the decision sustaining Joannell's protest and recommending termination of the award to EC; it is statements in this documents that EC challenges.

Under our Bid Protest Regulations, 4 C.F.R. § 21.3 (1991), an interested party, such as the awardee, is entitled to a copy of the protest, and, upon intervening in the protest, to a copy of the agency report and the protester's comments responding to the agency report. EC filed as an interested party on January 18, 1991. The protester's February 13 comments were a part of the original protest record. If EC did not receive the comments in due course as contemplated under our regulations, it should have requested the comments from our Office or the protester.

We do not think EC could delay obtaining the Joannell comments for 4 months. Just as a protester has the affirmative obligation to diligently pursue the information that forms the basis for its protest, Horizon Trading Co., Inc.; Drexel Heritage Furnishings, Inc., B-231177; B-231177.2, July 26, 1988, 88-2 CPD ¶ 86, we think an interested party to a protest has a similar obligation to diligently pursue information relevant to the protest in which the party is interested. Accordingly, it was EC's responsibility to assure that it promptly received, during the protest proceeding, all documents to which it was entitled. In that way, EC would have been fully aware of Joannell's position and any information EC had which rebutted that position could have been submitted during the original protest deliberations, not 2 months after the decision on the protest was rendered.

EC's submission on this issue furnished at this late date is not timely submitted and therefore we will not consider it. See Department of the Army--Request for Recon., B-237742.2, June 11, 1990, 90-1 CPD ¶ 546.

We deny the request for reconsideration.

  
for James F. Hinchman  
General Counsel